IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Appeal from Order No. 427 of 2005

Date of decision:- 30th October, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 427 of 2005

U.P.S.R.T.C.,
(now known as Uttaranchal Transport Corporation),
Through its Regional Manager. …….. Appellant

Versus

Sardar Harnam Singh
S/o Sri Munna Singh,
R/o Shastri Kunj, Haldwani,
District Nainital. …… Respondent

Mr. A.N. Sharma, Advocate for the appellant.
Mr. B.K. Gupta, Advocate for the respondent.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.

RAJEEV GUPTA, C. J. (Oral)

Appellant U.P.S.R.T.C. (now Uttaranchal Transport Corporation) has preferred this appeal under Section 173 of the Motor Vehicles Act against the Award dated 28.06.2005 passed by Motor Accident Claims Tribunal / Addl. District Judge, Haldwani, District Nainital in MACP No. 89 of 2004.

2. Clamant Sardar Harnam Singh claimed compensation of Rs. 6,00,000/- for the death of his wife Smt. Tajinder Kaur on 12.01.1992, when the cycle rickshaw, in which she was travelling, was dashed by the offending vehicle Roadways Bus bearing registration No. UP-78/9252 causing serious injuries to her which led to her instantaneous death on the spot itself. On the report lodged by one Manjeet Singh about the accident, a criminal case was registered against the driver of the Bus at Police Station Haldwani.

3. The Transport Corporation, owner of the Bus, contested the claim and denied its liability to pay compensation to the claimant on

the plea that the driver of the Bus was not responsible for the accident and in fact the accident occurred due to the negligence of the Rickshaw Puller.

4. The claimant examined PW1 Sardar Harnam Singh and PW2 Manjeet Singh in support of his claim, whereas the Transport Corporation examined its driver Basant Singh as DW1.

5. The Tribunal, on the evidence led by the parties, held that claimant's wife Smt. Tajinder Kaur died on account of the injuries sustained by her in the accident on 12.01.1992; the accident occurred due to the rash and negligent diving of the driver of the Bus; and the Transport Corporation, being the owner of the Bus, was liable to pay compensation to the claimant.

6. Considering that the claimant's wife Smt. Tajinder Kaur was not an earning person, the Tribunal assessed her notional income at Rs. 100/-per day; Rs. 3,000/-per month; and Rs. 36,000/-per annum. By deducting 1/3rd of the said amount as her personal expenses, the claimant's dependency was assessed at Rs. 24,000/- per annum. Considering that the deceased was aged about 54 years on the date of the accident, the Tribunal selected the multiplier of '11' and by multiplying the annual dependency of Rs. 24,000/- with the multiplier of '11', the compensation was worked out to Rs. 2,64,000/-. The Tribunal awarded further sums of Rs. 2,000/- towards Funeral Expenses and Rs. 5,000/- for Loss of Consortium to the claimant husband and, thus, a total sum of Rs. 2,71,000/- was awarded as compensation to the claimant for the death of his wife Tajinder Kaur in the motor accident on 12.01.1992. The Tribunal, further, directed the transport Corporation to pay interest on the amount of compensation at the rate of 9% per annum in the event of its failure to pay the compensation within a period of one month from the date of the Award. Out of the compensation of Rs. 2,71,000/-, Rs. 50,000/-

was directed to be paid to Gurdeep Singh, son of the deceased and the balance amount was awarded to the claimant husband.

7. Mr. A.N. Sharma, the learned counsel for the appellant Transport Corporation submitted that the Tribunal has erred in holding that the driver of the appellant's Bus was responsible for the accident; in assessing the income of the deceased at Rs. 3,000/- per month and Rs. 36,000/- per annum; in selecting the higher multiplier of '11' though the age of the claimant on the date of the accident and on the date of the filing of the claim petition was 63 years and 75 years respectively; and in awarding interest at the higher rate of 9% per annum.

8. Mr. B.K. Gupta, the learned counsel for the respondent, on the other hand, supported the Award and submitted that the compensation of Rs. 2,71,000/- awarded by the Tribunal is just and proper and as such, no interference in this appeal is warranted.

9. The death of claimant's wife Smt. Tajinder Kaur on account of the injuries sustained in the accident on 12.01.1992 was neither in dispute before the Tribunal nor is under challenge before us in this appeal. The learned counsel for the appellant Transport Corporation has challenged the finding recorded by the Tribunal holding the driver of the Bus responsible for the accident. True, the appellant Transport Corporation examined the driver of the Bus as DW1 before the Tribunal, who has deposed that the Bus did not hit the Cycle Rickshaw at all. The evidence of PW2 Manjeet Singh, the eye-witness examined by the claimant, on the other hand, is to the effect that the Bus of the appellant Transport Corporation was being driven by its driver rashly and negligently. The Tribunal, on a close scrutiny of the evidence of PW2 Manjeet Singh and DW1 Basant Singh and considering the number & nature of the injuries sustained by the deceased in the accident as recorded in her Postmortem Report,

reached to the conclusion that the driver of the Bus was responsible for the accident. We are satisfied that the finding recorded by the Tribunal holding the driver of the Bus responsible for the accident does not suffer from any infirmity whatsoever. We, therefore, uphold the finding recorded by the Tribunal in that behalf.

10. As the deceased was a household lady and was not an earning member, the Tribunal has rightly assessed her income at Rs. 100/- per day; Rs. 3,000/- per month; and Rs. 36,000/- per annum. The claimant's dependency also has been rightly assessed at Rs. 24,000/- per annum by deducting 1/3rd of Rs. 36,000/- as her personal expenses.

11. The multiplier of '11' selected by the Tribunal is certainly on the higher side. True, the deceased was aged about 54 years on the date of the accident, but the sole claimant in the case i.e. her husband Sardar Harnam Singh has shown his age on the date of the filing of the claim petition as 75 years. As the accident occurred in the year 1992 and the claim petition was filed in the year 2004, the age of the claimant, in the year of the accident i.e. 1992, was 63 years. Considering the age of the claimant and that of his deceased wife, in our opinion, multiplier of '8' would be appropriate in the case.

12. By multiplying the annual dependency of Rs. 24,000/- with the multiplier of '8', the compensation works out to Rs. 1,92,000/. The claimant is further entitled to receive Rs. 5,000/- towards Funeral Expenses; Rs. 5,000/- towards Loss of Estate; and Rs. 5,000/- for Loss of Consortium. Thus, the claimant is entitled to receive a total sum of Rs. 2,07,000/- as compensation for the death of his wife Tajinder Kaur in the motor accident on 12.01.1992.

13. The Tribunal has fallen into error in not awarding any interest to the claimant on the amount of compensation. By directing only a conditional payment of interest in the event of appellant's failure to pay the compensation to the claimant within a period of one month from the date of the Award, the Tribunal has deprived the claimant of the amount of interest, which was otherwise payable to him. Though the accident occurred on 12.01.1992, the claim petition was filed in the year 2004. The impugned Award was passed by the Tribunal on 28.06.2005. Considering all the relevant factors, we quantify the amount of interest at Rs. 14,000/-(Rupees Fourteen Thousand only).

14. Thus, the claimant becomes entitled to receive a total sum of Rs. 2,21,000/-(Rupees Two Lakhs and Twenty One Thousand only) [Rs. 2,07,000/- towards Compensation + Rs. 14,000/- towards Interest).

15. As Gurdeep Singh, the son of the deceased did not join as claimant in the claim petition and was 42 years of age, in our opinion, the entire amount of compensation should be given to claimant Sardar Harnam Singh, the husband of deceased Smt. Tajinder Kaur. By modifying the direction contained in the impugned Award, we direct that the entire amount of compensation of Rs. 2,07,000/- and Rs. 14,000/- towards Interest shall be paid to the claimant husband Sardar Harnam Singh.

16. For the foregoing reasons, the appeal filed by the appellant Transport Corporation under Section 173 of the Motor Vehicles Act is allowed in part. The compensation of Rs. 2,71,000/- awarded by the Tribunal is modified to Rs. 2,21,000/- (Rupees Two Lakhs and Twenty One Thousand only) [Rs. 2,07,000/- towards Compensation + Rs. 14,000/- towards Interest). Out of the sum of Rs. 2,71,000/- deposited by the appellant Transport Corporation before the Claims Tribunal, Rs.2,21,000/- shall be released in favour of claimant Sardar

Harnam Singh and the balance amount shall be released in favour of the appellant Transport Corporation.

17. The amount of Rs. 25,000/- (Rupees Twenty Five Thousand only) deposited by the appellant Transport Corporation as mandatory deposit under Section 173 of the Motor Vehicles Act be transmitted to the concerning Claims Tribunal immediately.

18. No order as to costs.

(Rajesh Tandon, J.) **(Rajeev Gupta, C.J.)**
30.10.2006 30.10.2006

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